

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

JAMES BELL,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 09-344V

Special Master Christian J. Moran

Filed: November 8, 2012

Decision on the record; insufficient
proof of causation; hepatitis B
vaccine; myasthenia gravis

Mark T. Sadaka, Englewood, NJ, for petitioner;

Glenn A. MacLeod, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

I. Procedural History

Petitioner James Bell filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 *et. seq.*, on May 29, 2009. His petition alleged that he developed myasthenia gravis after receiving a series of hepatitis B vaccinations from summer 2004 through spring 2005.

On October 30, 2009, respondent submitted her Rule 4 report. In this report, respondent questioned whether petitioner's petition was timely under the Vaccine Act's statute of limitations. Respondent also argued that even if the case was deemed timely, petitioner had failed to demonstrate entitlement to an award of compensation. Respondent asserted that "no medical record or expert medical opinion attributes

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this ruling on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

petitioner's condition to his receipt of Hep B vaccine." Respondent recommended that compensation be denied. See Resp't Rep't at 3-8.

A status conference was held on November 2, 2009 to discuss respondent's report. Following the status conference, petitioner was ordered to submit an amended petition, which was filed on November 10, 2009. On December 14, 2009, pursuant to an order, petitioner filed an affidavit regarding the onset of his symptoms.

A status conference was held on December 16, 2009. Pursuant to the discussions that took place at that conference, the parties agreed to stay the case pending the outcome of Wilkerson v. Secretary of Health & Human Services, No. 05-232V, 2009 WL 1583527 (Fed. Cl. 2009) and Cloer v. Secretary of Health & Human Services, No 05-1002V, 85 Fed. Cl. 141 (2008). These cases were on appeal to the Federal Circuit and dealt with statute of limitations issues relevant to this case.

On September 12, 2011, respondent filed a status report to update the undersigned on the status of Cloer. Respondent reported that the Federal Circuit had issued its en banc decision on August 5, 2011, resolving the statute of limitations issue in this case. The Circuit held that "[t]he status of limitations in the Vaccine Act begins to run on the date of occurrence of the first symptom or manifestation of onset of the vaccine-related injury for which compensation is sought, and the symptom or manifestation of onset must be recognized as such by the medical profession at large." Cloer, 654 F.3d 1322, 1335 (Fed. Cir. 2011).

Respondent was ordered to file an expert report addressing when the first sign or symptom of Mr. Bell's myasthenia gravis occurred. On January 3, 2012, respondent filed the expert report of Dr. Martin Bielawski. Dr. Bielawski stated that in his medical opinion the hepatitis B vaccine did not cause Mr. Bell's myasthenia gravis. He based his opinion on three factors, including the long duration between onset of symptoms and the administration of the vaccine. See exhibit A at 8.

On March 26, 2012, petitioner requested an additional stay in proceedings pending the Supreme Court's decision to grant certification in Cloer. On July 27, 2012, petitioner filed a status report to inform the undersigned that the petition for writ of certiorari in Cloer was denied. Petitioner's counsel requested 30 days to inform petitioner about the denial and to likely file a motion to voluntarily dismiss the instant case. This request was granted.

On August 31, 2012, petitioner filed a status report indicating that he conveyed a proposed stipulation to dismiss the case to respondent. Petitioner was ordered to file a motion to dismiss by October 1, 2012.

On October 1, 2012, Mr. Bell filed a motion to dismiss his case. In his motion, petitioner asserts that his petition was “timely under the law for symptom development or onset three years prior.” Petitioner maintains that his symptoms developed within two months of vaccination, on or about May 2005. Petitioner then states that for his case to continue, he “must argue that the symptoms of his condition began within the first few months after vaccination for causation purposes.” Petitioner argues “that the issue of whether or not his alleged symptoms are signs and symptoms of the disease that would be recognized by the medical community is a factual issue that has not been decided by this Court.” However, because he “must argue against himself . . . [petitioner] has agreed to dismiss his case.” Petitioner then formally requested the undersigned dismiss his case.

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter “the Program”), petitioner must prove either 1) that he suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to her vaccination, or 2) that he suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that Mr. Bell suffered a “Table Injury.” Thus, he is necessarily pursuing a causation-in-fact claim.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because the medical records do not support Mr. Bell’s claim, a medical opinion must be offered in support. Mr. Bell, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that Mr. Bell has failed to demonstrate either that he suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

Any questions may be directed to my law clerk, Jay All, at (202) 357-6353.

IT IS SO ORDERED.

S/Christian J. Moran
Christian J. Moran
Special Master